



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

CNC  
F. #2013R00948

*610 Federal Plaza  
Central Islip, New York 11722*

January 16, 2014

Randi Chavis, Esq.  
Federal Defenders of New York, Inc.  
700 Federal Plaza  
Central Islip, NY 11722  
(By Hand Delivery)

Edward Little, Esq.  
Hughes Hubbard & Reed LLP  
One Battery Park Place  
New York, NY 10004  
(By Federal Express)

Re: United States v. Phillip Kenner & Tommy C. Constantine  
Criminal Docket No. 13-607(JFB)

Dear Counsel:

Enclosed please find discovery provided by the government in accordance with Rule 16 of the Federal Rules of Criminal Procedure. The government will provide supplemental discovery in the near future. The government requests reciprocal discovery.

I. The Government's Required Disclosures

Enclosed please find:

- (1) One compact disk ("CD") containing transcripts of Philip Kenner's testimony before the Securities & Exchange Commission ("SEC") on April 28, 2011, April 29, 2011 and August 16, 2011. The documents are bates-numbered TR-SEC 1-428.
- (2) One digital versatile disk ("DVD") containing records provided by Northern Trust Bank. The documents consist of approximately 12,874 pages.
- (3) One CD containing records provided by Bank of America. The documents are bates-numbered BNK-BOA 1-2350.

Please note that to open the files on the enclosed DVD (which contains the Northern Trust Bank documents), you will need to enter certain passwords. Below is a table with the various passwords.

<b>Bates Range/File</b>	<b>Password</b>
12518-12776	kenner12
NAAZ000613 to NAAZ0012122	kenner
NAAZ0012123 to NAAZ 0012475	kenner
NAAZ012476 to NAAZ012512	kenner181
NAAZ12513-NAAZ12517	3kenneR
NTC+12812-12874	kenner2013
NTC 12779	3kenneR
NTC012810-NTC012811	3kenneR

The government will continue to provide discovery on a rolling basis.

## II. The Defendant's Required Disclosures

The government hereby requests reciprocal discovery under Rule 16(b) of the Federal Rules of Criminal Procedure. The government requests that the defendant allow inspection and copying of (1) any books, papers, documents, data, photographs, tapes, tangible objects, or copies or portions thereof, that are in the defendant's possession, custody or control, and that the defendant intends to introduce as evidence or otherwise rely on at trial, and (2) any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, that are in the defendant's possession, custody or control, and that the defendant intends to introduce as evidence or otherwise rely upon at trial, or that were prepared by a witness whom the defendant intends to call at trial.

The government also requests that the defendant disclose prior statements of witnesses who will be called by the defendant to testify. See Fed. R. Crim. P. 26.2. In order to avoid unnecessary delays, the government requests that the defendant have copies of those statements available for production to the government no later than the commencement of trial.

The government also requests that the defendant disclose a written summary of testimony that the defendant intends to use as evidence at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence. The summary should describe the opinions of the witnesses, the bases and reasons for the opinions, and the qualification of the witnesses.

Pursuant to Fed. R. Crim. P. 12.3, the government hereby demands written notice of the defendant's intention, if any, to claim a defense of actual or believed exercise of public authority, and also demands the names and addresses of the witnesses upon whom the defendant intends to rely in establishing the defense identified in any such notice.

### III. Future Discussions

If you have any questions or requests regarding further discovery or a disposition of this matter, please do not hesitate to contact me.

Please be advised that, pursuant to the policy of the Office concerning plea offers and negotiations, no plea offer is effective unless and until made in writing and signed by authorized representatives of the Office. In particular, any discussion regarding the pretrial disposition of a matter that is not reduced to writing and signed by authorized representatives of the Office cannot and does not constitute a "formal offer" or a "plea offer," as those terms are used in Lafler v. Cooper, 132 S. Ct. 1376 (2012), and Missouri v. Frye, 132 S. Ct. 1399 (2012).

Very truly yours,

LORETTA E. LYNCH  
United States Attorney

By: /s/Carrie N. Capwell  
Carrie N. Capwell  
Assistant U.S. Attorney  
(631) 715-7836

Enclosures

cc: Clerk of the Court (JFB) (by ECF) (without enclosures)